Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S. T. R. No. 110 of 2003
(Old No. 1380/1992)

Commissioner of Sales Tax
U.P. Lucknow. ……Applicant/Revisionist

Vs.

Khusiram Rangilal
Vikasnagar
Dehradun. ...…..Opposite Party

Learned Standing Counsel for the Revisionist.
None for the Respondent.

Hon'ble Prafulla C. Pant, J.

Heard learned Standing Counsel. No one turned up on behalf of the assessee, even after sufficient service.

This Sales Tax Revision, preferred under Section 11 (1) of the U.P. Sales Tax Act, 1948, was filed before the Allahabad High Court in the year 1992 and is received on transfer, by this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal. The revision is directed against the order dated 28.04.1992, passed by Sales Tax Tribunal, Dehradun.

The following question of law is required to be answered in this revision:-

"Whether on the facts and circumstances of the case, the Sales Tax Tribunal was legally justified to hold that transactions of 'Sonth' are not taxable in the hands of the dealer despite the fact that the dealer has purchased 'Sonth' in his own account from his selling agency and issued 6 R (OF MANDI SAMITI) to farmers and 9 R to himself?."

The assessee is a dealer who carried on his business of buying and selling food grain and kirana etc for the assessment year 1984-85 and 1985-86. It appears that the department issued a notice under Section 21 of U.P. Sales Tax Act, 1948, for re-assessment on the ground that “Sonth’ (dry ginger), purchased by the dealer, got escaped in the earlier assessment. The assessee case is that the liability to pay on the turnover relating to dry ginger either lies with the importer or with the manufacturer. The assessee is neither of the two. It was alleged by the assessee that he purchased dry ginger through made samiti, as such, no tax was liable on such turnover. On the other hand, the department alleges that the first sale has been made by the assessee to himself, as there is only one account.

In C.V. Rama Swamy Goundar Sons Vs. Deputy Commercial Tax Officer, 1990 (77) S.T.C. Pg. 68, it has been held that if the dealer has acted only as an intermediary, by receiving goods from the seller and made over to the purchaser, he is not liable to tax, as the sale is not completed when he received the items from the cultivators. In Commissioner Sales Tax Vs. Sunil Kumar 1989 U.P.T.C. Pg. 395, it has been held that in the business of chillies directly purchased from farmers, if the assessee is neither importer nor manufacturer, he is not liable to tax. In the present case also, what assessee has done in this he received dry ginger from farmers through mandi samiti, by issuing 6 R in the name of cultivators and 9 R in his own name. As such, that he has acted as selling agent of the cultivators. Learned counsel for the applicant, argued that the act on the part of the assessee is a sale under Section 2 (ee), I am unable to accept said submission for the reasons that Sections 2 (ee), defines manufacturer and provides that in relation to any goods, the manufacturer means the dealer who makes first sale of such goods in the State after they are manufactured. Since sale could not have been made to himself by the assessee as such, it cannot be said to be the first

sale in the state. Therefore, the assessee, cannot be said to be the manufacturer. That being so, there appears no error in the impugned order passed by the learned Sales Tax Tribunal that the assessee was not liable to pay tax on “Sonth’, purchased from cultivators and sent directly outside U.P. to other dealers. It is significant to mention here that there was no purchase tax on the purchase of ‘Sonth’ for the assessment years in question.

In view of above discussion, the question of law is answered in negative, that is, in favour of the assessee. The revision is dismissed.

(Prafulla C. Pant, J.)

Dt: 25.07.2005
Sweta